IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 942 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 3 - Petitioner(s)
Versus
MALATIBEN SURESHBHAI CHILE - Respondent(s)

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Appearance :
MR MUKESH A PATEL for Petitioner,
MR YV SHAH for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

ORAL JUDGMENT

1. Heard Mr.Mukesh A.Patel, learned counsel for the petitioner and Mr.Y.V. Shah, learned counsel for the

respondent.

2. Mr.Patel has raised number of arguments in support of his submission that the workman is neither a railway servant nor a temporary employee and as his status is in dispute, an application under sec.33-C(2) of the Industrial Disputes Act (“the Act” for short) was not maintainable. According to Mr.Patel, in a case of dispute and when there are no pre-adjudicated rights or pre-judged rights, an application under sec.33-C(2) of the Act would not be maintainable.

3. Mr.Y.V. Shah, learned counsel for the respondent, on the other hand, placing reliance upon the judgement of the Supreme Court in the matter of P.S. Rajgopalan, A.I.R. 1964 S.C. 743, submitted that in a case of a genuine dispute, submissions of Mr.Patel certainly would be acceptable, but, where the right flows from an award or settlement or legal position or from a judgement of a higher court, then, the other party cannot be allowed to say that the court cannot exercise its jurisdiction under sec.33-C(2) of the Act.

4. Though it was argued by Mr.Patel that the workman is not a railway servant, because, he was a casual labour, but the argument is contrary to the facts available on the

records. Undisputedly, the workman came to the railway administration as a casual labour, but on completion of particular period of service and on acquiring certain qualification, temporary status was conferred upon him. Such temporary workman would be a servant of the railway administration.

5. Once that position is accepted, then, such person would be entitled to the benefits flowing from Family Pension Rules, Rule 75, which provides that a person who is in continuous service for one year, if dies, then, dependents would be entitled to family pension.

6. A Division Bench of this Court in the matter of Rukhiben Rupabhai Vs. Union of India, 2005 (3) G.L.R. 2378, in para 39 of the judgement has observed as under:-

> “39. In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labour has served for requisite period continuously, he has to be treated temporary, in other words, he is a 'temporary railway servant'. This is incidence of statutory provisions and judicial pronouncements. Having acquired this status, he is entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to

family pension. Regularisation against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularisation/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing of an employee 'casual/temporary status' and depriving him pension and his/her widow/widower family pension amount to negation of his statutory and constitutional rights under Arts. 14, 16, 21, 41 and 42. Therefore, having become 'temporary railway employee', he should be considered for appointment against permanent post along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yadav case (supra), therefore, illegal, and cannot be given effect to by the Railways changing the position of 'casual labour' from 'temporary casual labour' or 'casual labour with temporary status'.

7. From the observations made by the Division Bench, it would clearly appear that there is a sharp distinction between a casual labour, a temporary casual labour and casual labour with temporary status. The Division Bench has found that where casual labour has served for

requisite period continuously, he has to be treated temporary, he would be taken to be 'temporary railway servant'. If the deceased was temporary railway servant, working under the railway administration and his work falls under continuous service, then, in accordance with Rule 75, his dependents would be entitled to family pension.

8. The Apex Court does not say that on the admitted factual position and admitted legal position, if a person is entitled to a relief and false, frivolous and misconceived defence is raised, court would lose its jurisdiction. Present is not a case where the Court firstly decided the entitlement of the respondent, but present is a case where the respondent was entitled to the family pension, but the entitlement was being unnecessarily denied by the present petitioner.

9. The Labour Court was absolutely justified in making the orders in favour of the respondent dependent. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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